

LABOUR DEPARTMENT

The 29th November, 1984

No. 9/5/84-6 Lab/8247.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Sirsa Co-op. Marketing-cum-Processing Society Ltd., Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 119 of 81

between

SHRI MOHINDER SINGH WORKMAN AND THE MANAGEMENT OF M/S. SIRSA CO-OPERATIVE MARKETING-CUM-PROCESSING SOCIETY LIMITED, SIRSA,

Present:—

Shri T.C. Gupta, A.R. for the workman.

Shri S.S. Goel, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Mohinder Singh and the management of M/s. Sirsa Cooperative Marketing-cum-Processing Society Limited, Sirsa, to this Court, for adjudication,—vide Labour Department Gazette notification No. ID/HSR/92/81/47658, dated 17th September, 1981:—

Whether the termination of service of Shri Mohinder Singh was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Chowkidar with the respondent in the year 1977 but his services were terminated by the respondent on 21st May, 1981 without issuing any chargesheet or holding any enquiry or any prior notice or payment of retrenchment compensation as envisaged under section 25-F, of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent alleging that the workman was guilty of contumacy and acts of indiscipline and so the Board of Directors,—vide its resolution number 15 resolved to terminate the services of the workman, who was offered one month's notice pay, which was accepted by the workman and so it is asserted that the termination of services of the workman was made in accordance with the conditions of his appointment. Other pleas projected were that the present application is not based upon any existing right of the workman and the provisions of the Industrial Disputes Act were not applicable in his case and that acceptance of one month's notice pay, debars the workman from raising a demand notice, who had not exhausted all the remedies available to him.

4. On the pleadings of the parties, the following issue was framed on 28th January, 1982—

1. Whether the termination of service of Shri Mohinder Singh was justified and in order? If not, to what relief is he entitled?

5. The management examined Shri Om Parkash, Manager as MW-1 and the workman himself appeared as WW-1.

6. I have the learned Authorised Representatives of the parties and have gone through the evidence on record. My findings on the issue framed are as below:—

Issue No. 1

7. MW-1 Shri Om Parkash, Manager of the respondent stated that the workman was employed in the year 1977 on temporary basis, but later on he was made permanent and that he was given one month's notice pay prior to the termination of his service on 21st May, 1981 and that Ex. MW-1/1 is the copy of resolution of the Board of Directors,—vide which it was resolved that the services of the workman be dispensed with. He further stated that the respondent is a commercial establishment but does not fall within the ambit of the term "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947. The workman appeared as his own witness and made a statement completely in corroboration with the allegations detailed above.

8. The learned Authorised Representative of the workman Shri T.C. Gupta forcefully argued that the order of termination under the garb of resolution of the Board of Directors is in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947, because the workman has put in more than three years of service with the respondent on the date his services were terminated and that his termination squarely fall with the purview of the term "retrenchment" as defined in section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). In support of his contention he has cited 1980(II) LLJ page 72, *Santosh Gupta, v/s. State Bank of Patiala*. The case of the present workman does not fall within any of the exceptions provided in the said section. If the workman was insolent and arrogant in his behaviour and negligent in the performance of his duties, a domestic enquiry could be held by the respondent and the workman given a chance to defend himself, but no such procedure was adopted by the respondent, who made a summary order of termination, though providing for a month's salary in lieu of notice period. The said order of termination is in gross violation of the provisions of section 25-F of the Industrial Disputes Act, 1947 and as such the same cannot be sustained being illegal and void *ab initio*. So, this issue is answered in favour of the workman.

9. In view of the aforesaid findings, it is held that the order of termination passed by the respondent was illegal, void *ab initio* and was against the provisions of section 25-F of the Industrial Disputes Act, 1947 and so the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 25th October, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 119/81/3526, dated 8th November, 1984

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/8248.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of (i) M/s M. D. Haryana State Minor Irrigation (Tubewell) Ltd., Chandigarh (ii) Executive Engineer, H.S.M.I.T.C., Division No. 4, Fatehabad :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 93 of 83

between

SHRI MANGE RAM, WORKMAN AND THE MANAGEMENT OF M/S. MANAGING DIRECTOR, HARYANA STATE MINOR IRRIGATION (TUBEWELL) LTD., CHANDIGARH (ii) EXECUTIVE ENGINEER, HARYANA STATE MINOR IRRIGATION (TUBE-WELL) CORPORATION, DIVISION NO. 4, FATEHABAD

Present:—

Shri T.C. Gupta, A.R. for the workman.

Shri B.K. Bansal, J.E./Shri R.L. Gupta Accountant for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Mange Ram and the management of M/s. Managing Director, Haryana State Minor Irrigation (Tube-well) Corporation Ltd., Chandigarh, (ii) Executive Engineer, Haryana State Minor Irrigation (Tube-well) Corporation Division No. 4, Fatehabad, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/31-83/30957—61 dated 30th June, 1983:—

Whether the termination of service of Shri Mange Ram was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as T/Mate on 1st March, 1980 and worked with the respondent as such upto 31st October, 1982 on which date, the respondent dispensed with his services in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947.

3. A detailed reply has been filed by the respondent. The pleas taken are that the claimant was employed purely on temporary basis by the field officials for a project work and the services of the workman could be terminated at any time without any notice. It is further alleged that the applicant was employed in the month of March, 1980 and remained absent from duty from 1st December, 1981 to 31st December, 1981, 1st January, 1982 to 6th January, 1982 and 19th August, 1982 to 26th August, 1982 and left the services of the respondent on 11th October, 1982 and his services were terminated on 1st December, 1981 and was re-employed again on 7th January, 1982. It is further alleged that since the workman was employed for a particular project only so, under section 25-FFA (b) of the Industrial Disputes Act, 1947, there was no necessity for the issuance of any notice to the workman before terminating his services.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the respondent

5. On the pleadings of the parties, the following issue was framed by me on 27th July, 1984:—

1. Whether the termination of service of Shri Mange Ram was justified and in order? If not, to what relief is he entitled?

6. The management examined Shri B. K. Bansal, Junior Engineer as MW-1 and the workman appeared as his own witness as WW-1.

7. I have heard Shri T.C. Gupta, learned Authorised representative of the workman and Shri R. L. Gupta, Accountant of the respondent. My findings on the issue framed are as below:—

Issue No. 1

8. The statement made by Shri B.K. Bansal, who was examined as MW-1 is in consonance with pleas taken by the respondent in the reply filed in the Court. So, admittedly the workman remained employed with the respondent from 7th January, 1982 to 18th October, 1982 and 27th August, 1982 to 10th October, 1982, on which date his services were terminated. The question would be as to whether the workman has actually worked for 240 days with the respondent during the last 12 calendar months preceding his date of dismissal. The number of working days were calculated in the presence of the parties. From 7th January, 1982 to 10th October, 1982 the workman has actually worked for 270 days with the respondent. The only umbrage offered on behalf of the respondent was that there was break in service of the workman from 19th August, 1982 to 26th August, 1982 and as such the workman cannot avail of the provisions of section 25-F of the Industrial Disputes Act, 1947. There is no paucity of authorities on the point that when a workman remains employed for 240 days even than short breaks, he cannot be denied the benefits envisaged under section 25-F of the Industrial Disputes Act, 1947. The most of ten quoted authority is 1980 II LLJ page 72 Santosh Gupta versus State Bank of Patiala. So, in view of the law laid down in this authority, termination of service of the workman was retrenched and as such the workman was entitled to the benefits as envisaged under section 25-F of the Industrial Disputes Act, 1947. No notice or retrenchment compensation was given to the workman by the management before terminating his services and as such his termination was illegal and void *abinitio*. So, this issue is answered in favour of the workman.

9. In the light of my foregoing discussion, the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 30th October, 1984.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endst. No. 3528, dated 8th November, 1984

Forwarded (four copies), to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.